REMARKS

I. Introduction

Claims 1-3, 6, 7, 9 and 11-14 remain pending and rejected in the present application. Claim 9 has been amended. For at least the reasons set forth below, Applicants respectfully submit that the claims are in condition for allowance.

II. Rejection of Claim 9 under 35 U.S.C. § 112, second paragraph

Claim 9 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite, i.e., the limitation "the actual speed" lacks antecedent bases. In response, claim 9 has been amended to overcome the rejection. Accordingly, Applicants submit that claim 9 is in compliance with 35 U.S.C. § 112, second paragraph.

III. Rejection of Claims 1-3, 6, 7, 9 and 11-14 under 35 U.S.C. § 102(e)

Claims 1-3, 6, 7, 9, 11-14 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 7,321,818 ("Michi"). Applicants respectfully submit that Michi fails to anticipate pending claims 1-3, 6, 7, 9 and 11-14, for the reasons explained below.

To anticipate a claim under § 102(e), a single prior art reference must identically disclose each and every claim element. See L indeman Machinenfabrik v. American Hoist and Derrick, 730 F.2d 1452, 1458 (Fed. Cir. 1984). If any claimed element is absent from a prior art reference, it cannot anticipate the claim. See Rowe v. Dror, 112 F.3d 473, 478 (Fed. Cir. 1997). Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claim invention, arranged exactly as in the claim. Lindeman, 703 F.2d 1458 (Emphasis added). Additionally, not only must each of the claim limitations be identically disclosed, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed invention, namely the inventions of the rejected claims, as discussed above. See Akzo, N.V. v. U.S.I.T.C., 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986). To the extent that the Examiner may be relying on the doctrine of inherent disclosure for the anticipation rejection, the Examiner must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied art." (See M.P.E.P. § 2112; emphasis in original; see also Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)).

Applicants note that the 102(e) reference date of Michi (U.S. 7,321,818) is March 10, 2005, which is after the U.S. filing date of the present application, January 29, 2004, and therefore Michi is not a valid 102(e) reference. Applicants note that the PCT application corresponding to Michi (i.e., PCT Pub. No. WO 03/076226 A1) was not published in English, and therefore the PCT Pub. No. WO 03/076226 A1 does not have a 102(e) date. However, for the sake of completeness (in addressing any potential 102(a) issue implicated by PCT Pub. No. WO 03/076226 A1, published on September 18, 2003), Applicants are submitting herewith a certified translation of the German priority application DE 103 036 11.3 filed on January 20, 2003, which translation is accompanied by the statement of the translator that the translation of the certified copy is accurate. In view of the submission of the certified translation of the priority application, Applicants submit that the rejection based on Michi should be withdrawn.

For the foregoing reasons, claim 1 and its dependent claims 2-3, 6, 7, 9 and 11-14 are not anticipated by Michi. Withdrawal of the anticipation rejection of pending claims 1-3, 6, 7, 9 and 11-14 is respectfully requested.

IV. Conclusion

In view of the foregoing, it is submitted that claims 1-3, 6, 7, 9 and 11-14 are in allowable condition. It is therefore respectfully requested that the present application issue as early as possible.

Respectfully submitted,
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